

## INITIATIVE 937

I, Sam Reed, Secretary of State of the State of Washington and custodian of its seal hereby certify that, according to the records on file in my office, the attached copy of Initiative Measure No. 937 to the People is a true and correct copy as it was received by this office.

1       AN ACT Relating to requirements for new energy resources; adding a  
2       new chapter to Title 19 RCW; and prescribing penalties.

3       BE IT ENACTED BY THE PEOPLE OF THE STATE OF WASHINGTON:

4       NEW SECTION.   **Sec. 1.**   INTENT.   This chapter concerns requirements  
5       for new energy resources.   This chapter requires large utilities to  
6       obtain fifteen percent of their electricity from new renewable  
7       resources such as solar and wind by 2020 and undertake cost-effective  
8       energy conservation.

9       NEW SECTION.   **Sec. 2.**   DECLARATION OF POLICY.   Increasing energy  
10      conservation and the use of appropriately sited renewable energy  
11      facilities builds on the strong foundation of low-cost renewable  
12      hydroelectric generation in Washington state and will promote energy  
13      independence in the state and the Pacific Northwest region.   Making the  
14      most of our plentiful local resources will stabilize electricity prices  
15      for Washington residents, provide economic benefits for Washington  
16      counties and farmers, create high-quality jobs in Washington, provide  
17      opportunities for training apprentice workers in the renewable energy

field, protect clean air and water, and position Washington state as a national leader in clean energy technologies.

NEW SECTION.     **Sec. 3.** DEFINITIONS. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Attorney general" means the Washington state office of the attorney general.

(2) "Auditor" means: (a) The Washington state auditor's office or its designee for qualifying utilities under its jurisdiction that are not investor-owned utilities; or (b) an independent auditor selected by a qualifying utility that is not under the jurisdiction of the state auditor and is not an investor-owned utility.

(3) "Commission" means the Washington state utilities and transportation commission.

(4) "Conservation" means any reduction in electric power consumption resulting from increases in the efficiency of energy use, production, or distribution.

(5) "Cost-effective" has the same meaning as defined in RCW 80.52.030.

(6) "Council" means the Washington state apprenticeship and training council within the department of labor and industries.

(7) "Customer" means a person or entity that purchases electricity for ultimate consumption and not for resale.

(8) "Department" means the department of community, trade, and economic development or its successor.

(9) "Distributed generation" means an eligible renewable resource where the generation facility or any integrated cluster of such facilities has a generating capacity of not more than five megawatts.

(10) "Eligible renewable resource" means:

(a) Electricity from a generation facility powered by a renewable resource other than fresh water that commences operation after March 31, 1999, where: (i) The facility is located in the Pacific Northwest; or (ii) the electricity from the facility is delivered into Washington state on a real-time basis without shaping, storage, or integration services; or

(b) Incremental electricity produced as a result of efficiency improvements completed after March 31, 1999, to hydroelectric generation projects owned by a qualifying utility and located in the

1 Pacific Northwest or to hydroelectric generation in irrigation pipes  
2 and canals located in the Pacific Northwest, where the additional  
3 generation in either case does not result in new water diversions or  
4 impoundments.

5 (11) "Investor owned utility" has the same meaning as defined in  
6 RCW 19.29A.010.

7 (12) "Load" means the amount of kilowatt-hours of electricity  
8 delivered in the most recently completed year by a qualifying utility  
9 to its Washington retail customers.

10 (13) "Nonpower attributes" means all environmentally related  
11 characteristics, exclusive of energy, capacity reliability, and other  
12 electrical power service attributes, that are associated with the  
13 generation of electricity from a renewable resource, including but not  
14 limited to the facility's fuel type, geographic location, vintage,  
15 qualification as an eligible renewable resource, and avoided emissions  
16 of pollutants to the air, soil, or water, and avoided emissions of  
17 carbon dioxide and other greenhouse gases.

18 (14) "Pacific Northwest" has the same meaning as defined for the  
19 Bonneville power administration in section 3 of the Pacific Northwest  
20 electric power planning and conservation act (94 Stat. 2698; 16 U.S.C.  
21 Sec. 839a).

22 (15) "Public facility" has the same meaning as defined in RCW  
23 39.35C.010.

24 (16) "Qualifying utility" means an electric utility, as the term  
25 "electric utility" is defined in RCW 19.29A.010, that serves more than  
26 twenty-five thousand customers in the state of Washington. The number  
27 of customers served may be based on data reported by a utility in form  
28 861, "annual electric utility report," filed with the energy  
29 information administration, United States department of energy.

30 (17) "Renewable energy credit" means a tradable certificate of  
31 proof of at least one megawatt-hour of an eligible renewable resource  
32 where the generation facility is not powered by fresh water, the  
33 certificate includes all of the nonpower attributes associated with  
34 that one megawatt-hour of electricity, and the certificate is verified  
35 by a renewable energy credit tracking system selected by the  
36 department.

37 (18) "Renewable resource" means: (a) Water; (b) wind; (c) solar  
38 energy; (d) geothermal energy; (e) landfill gas; (f) wave, ocean, or  
39 tidal power; (g) gas from sewage treatment facilities; (h) biodiesel

1 fuel as defined in RCW 82.29A.135 that is not derived from crops raised  
2 on land cleared from old growth or first-growth forests where the  
3 clearing occurred after the effective date of this section; and (i)  
4 biomass energy based on animal waste or solid organic fuels from wood,  
5 forest, or field residues, or dedicated energy crops that do not  
6 include (i) wood pieces that have been treated with chemical  
7 preservatives such as creosote, pentachlorophenol, or copper-chrome-  
8 arsenic; (ii) black liquor byproduct from paper production; (iii) wood  
9 from old growth forests; or (iv) municipal solid waste.

10 (19) "Rule" means rules adopted by an agency or other entity of  
11 Washington state government to carry out the intent and purposes of  
12 this chapter.

13 (20) "Year" means the twelve-month period commencing January 1st  
14 and ending December 31st.

15 NEW SECTION. **Sec. 4.** ENERGY CONSERVATION AND RENEWABLE ENERGY  
16 TARGETS. (1) Each qualifying utility shall pursue all available  
17 conservation that is cost-effective, reliable, and feasible.

18 (a) By January 1, 2010, using methodologies consistent with those  
19 used by the Pacific Northwest electric power and conservation planning  
20 council in its most recently published regional power plan, each  
21 qualifying utility shall identify its achievable cost-effective  
22 conservation potential through 2019. At least every two years  
23 thereafter, the qualifying utility shall review and update this  
24 assessment for the subsequent ten-year period.

25 (b) Beginning January 2010, each qualifying utility shall establish  
26 and make publicly available a biennial acquisition target for cost-  
27 effective conservation consistent with its identification of achievable  
28 opportunities in (a) of this subsection, and meet that target during  
29 the subsequent two-year period. At a minimum, each biennial target  
30 must be no lower than the qualifying utility's pro rata share for that  
31 two-year period of its cost-effective conservation potential for the  
32 subsequent ten-year period.

33 (c) In meeting its conservation targets, a qualifying utility may  
34 count high-efficiency cogeneration owned and used by a retail electric  
35 customer to meet its own needs. High-efficiency cogeneration is the  
36 sequential production of electricity and useful thermal energy from a  
37 common fuel source, where, under normal operating conditions, the  
38 facility has a useful thermal energy output of no less than thirty-

1 three percent of the total energy output. The reduction in load due to  
2 high-efficiency cogeneration shall be: (i) Calculated as the ratio of  
3 the fuel chargeable to power heat rate of the cogeneration facility  
4 compared to the heat rate on a new and clean basis of a  
5 best-commercially available technology combined-cycle natural gas-fired  
6 combustion turbine; and (ii) counted towards meeting the biennial  
7 conservation target in the same manner as other conservation savings.

8 (d) The commission may determine if a conservation program  
9 implemented by an investor-owned utility is cost-effective based on the  
10 commission's policies and practice.

11 (e) The commission may rely on its standard practice for review and  
12 approval of investor-owned utility conservation targets.

13 (2)(a) Each qualifying utility shall use eligible renewable  
14 resources or acquire equivalent renewable energy credits, or a  
15 combination of both, to meet the following annual targets:

16 (i) At least three percent of its load by January 1, 2012, and each  
17 year thereafter through December 31, 2015;

18 (ii) At least nine percent of its load by January 1, 2016, and each  
19 year thereafter through December 31, 2019; and

20 (iii) At least fifteen percent of its load by January 1, 2020, and  
21 each year thereafter.

22 (b) A qualifying utility may count distributed generation at double  
23 the facility's electrical output if the utility: (i) Owns or has  
24 contracted for the distributed generation and the associated renewable  
25 energy credits; or (ii) has contracted to purchase the associated  
26 renewable energy credits.

27 (c) In meeting the annual targets in (a) of this subsection, a  
28 qualifying utility shall calculate its annual load based on the average  
29 of the utility's load for the previous two years.

30 (d) A qualifying utility shall be considered in compliance with an  
31 annual target in (a) of this subsection if: (i) The utility's weather-  
32 adjusted load for the previous three years on average did not increase  
33 over that time period; (ii) after the effective date of this section,  
34 the utility did not commence or renew ownership or incremental  
35 purchases of electricity from resources other than renewable resources  
36 other than on a daily spot price basis and the electricity is not  
37 offset by equivalent renewable energy credits; and (iii) the utility  
38 invested at least one percent of its total annual retail revenue

1 requirement that year on eligible renewable resources, renewable energy  
2 credits, or a combination of both.

3 (e) The requirements of this section may be met for any given year  
4 with renewable energy credits produced during that year, the preceding  
5 year, or the subsequent year. Each renewable energy credit may be used  
6 only once to meet the requirements of this section.

7 (f) In complying with the targets established in (a) of this  
8 subsection, a qualifying utility may not count:

9 (i) Eligible renewable resources or distributed generation where  
10 the associated renewable energy credits are owned by a separate entity;  
11 or

12 (ii) Eligible renewable resources or renewable energy credits  
13 obtained for and used in an optional pricing program such as the  
14 program established in RCW 19.29A.090.

15 (g) Where fossil and combustible renewable resources are cofired in  
16 one generating unit located in the Pacific Northwest where the cofiring  
17 commenced after March 31, 1999, the unit shall be considered to produce  
18 eligible renewable resources in direct proportion to the percentage of  
19 the total heat value represented by the heat value of the renewable  
20 resources.

21 (h)(i) A qualifying utility that acquires an eligible renewable  
22 resource or renewable energy credit may count that acquisition at one  
23 and two-tenths times its base value:

24 (A) Where the eligible renewable resource comes from a facility  
25 that commenced operation after December 31, 2005; and

26 (B) Where the developer of the facility used apprenticeship  
27 programs approved by the council during facility construction.

28 (ii) The council shall establish minimum levels of labor hours to  
29 be met through apprenticeship programs to qualify for this extra  
30 credit.

31 (i) A qualifying utility shall be considered in compliance with an  
32 annual target in (a) of this subsection if events beyond the reasonable  
33 control of the utility that could not have been reasonably anticipated  
34 or ameliorated prevented it from meeting the renewable energy target.  
35 Such events include weather-related damage, mechanical failure,  
36 strikes, lockouts, and actions of a governmental authority that  
37 adversely affect the generation, transmission, or distribution of an  
38 eligible renewable resource under contract to a qualifying utility.

(3) Utilities that become qualifying utilities after December 31, 2006, shall meet the requirements in this section on a time frame comparable in length to that provided for qualifying utilities as of the effective date of this section.

NEW SECTION. Sec. 5. RESOURCE COSTS. (1)(a) A qualifying utility shall be considered in compliance with an annual target created in section 4(2) of this act for a given year if the utility invested four percent of its total annual retail revenue requirement on the incremental costs of eligible renewable resources, the cost of renewable energy credits, or a combination of both, but a utility may elect to invest more than this amount.

(b) The incremental cost of an eligible renewable resource is calculated as the difference between the levelized delivered cost of the eligible renewable resource, regardless of ownership, compared to the levelized delivered cost of an equivalent amount of reasonably available substitute resources that do not qualify as eligible renewable resources, where the resources being compared have the same contract length or facility life.

(2) An investor-owned utility is entitled to recover all prudently incurred costs associated with compliance with this chapter. The commission shall address cost recovery issues of qualifying utilities that are investor-owned utilities that serve both in Washington and in other states in complying with this chapter.

NEW SECTION. Sec. 6. ACCOUNTABILITY AND ENFORCEMENT. (1) Except as provided in subsection (2) of this section, a qualifying utility that fails to comply with the energy conservation or renewable energy targets established in section 4 of this act shall pay an administrative penalty to the state of Washington in the amount of fifty dollars for each megawatt-hour of shortfall. Beginning in 2007, this penalty shall be adjusted annually according to the rate of change of the inflation indicator, gross domestic product-implicit price deflator, as published by the bureau of economic analysis of the United States department of commerce or its successor.

(2) A qualifying utility that does not meet an annual renewable energy target established in section 4(2) of this act is exempt from the administrative penalty in subsection (1) of this section for that year if the commission for investor-owned utilities or the auditor for

1 all other qualifying utilities determines that the utility complied  
2 with section 4(2) (d) or (i) or 5(1) of this act.

3 (3) A qualifying utility must notify its retail electric customers  
4 in published form within three months of incurring a penalty regarding  
5 the size of the penalty and the reason it was incurred.

6 (4) The commission shall determine if an investor-owned utility may  
7 recover the cost of this administrative penalty in electric rates, and  
8 may consider providing positive incentives for an investor-owned  
9 utility to exceed the targets established in section 4 of this act.

10 (5) Administrative penalties collected under this chapter shall be  
11 deposited into the energy independence act special account which is  
12 hereby created. All receipts from administrative penalties collected  
13 under this chapter must be deposited into the account. Expenditures  
14 from the account may be used only for the purchase of renewable energy  
15 credits or for energy conservation projects at public facilities, local  
16 government facilities, community colleges, or state universities. The  
17 state shall own and retire any renewable energy credits purchased using  
18 moneys from the account. Only the director of general administration  
19 or the director's designee may authorize expenditures from the account.  
20 The account is subject to allotment procedures under chapter 43.88 RCW,  
21 but an appropriation is not required for expenditures.

22 (6) For a qualifying utility that is an investor-owned utility, the  
23 commission shall determine compliance with the provisions of this  
24 chapter and assess penalties for noncompliance as provided in  
25 subsection (1) of this section.

26 (7) For qualifying utilities that are not investor-owned utilities,  
27 the auditor is responsible for auditing compliance with this chapter  
28 and rules adopted under this chapter that apply to those utilities and  
29 the attorney general is responsible for enforcing that compliance.

30 NEW SECTION. **Sec. 7.** REPORTING AND PUBLIC DISCLOSURE. (1) On or  
31 before June 1, 2012, and annually thereafter, each qualifying utility  
32 shall report to the department on its progress in the preceding year in  
33 meeting the targets established in section 4 of this act, including  
34 expected electricity savings from the biennial conservation target,  
35 expenditures on conservation, actual electricity savings results, the  
36 utility's annual load for the prior two years, the amount of  
37 megawatt-hours needed to meet the annual renewable energy target, the  
38 amount of megawatt-hours of each type of eligible renewable resource



1 acquired, the type and amount of renewable energy credits acquired, and  
2 the percent of its total annual retail revenue requirement invested in  
3 the incremental cost of eligible renewable resources and the cost of  
4 renewable energy credits. For each year that a qualifying utility  
5 elects to demonstrate alternative compliance under section 4(2) (d) or  
6 (i) or 5(1) of this act, it must include in its annual report relevant  
7 data to demonstrate that it met the criteria in that section. A  
8 qualifying utility may submit its report to the department in  
9 conjunction with its annual obligations in chapter 19.29A RCW.

10 (2) A qualifying utility that is an investor-owned utility shall  
11 also report all information required in subsection (1) of this section  
12 to the commission, and all other qualifying utilities shall also make  
13 all information required in subsection (1) of this section available to  
14 the auditor.

15 (3) A qualifying utility shall also make reports required in this  
16 section available to its customers.

17 NEW SECTION. **Sec. 8.** RULE MAKING. (1) The commission may adopt  
18 rules to ensure the proper implementation and enforcement of this  
19 chapter as it applies to investor-owned utilities.

20 (2) The department shall adopt rules concerning only process,  
21 timelines, and documentation to ensure the proper implementation of  
22 this chapter as it applies to qualifying utilities that are not  
23 investor-owned utilities. Those rules include, but are not limited to,  
24 rules associated with a qualifying utility's development of  
25 conservation targets under section 4(1) of this act; a qualifying  
26 utility's decision to pursue alternative compliance in section 4(2) (d)  
27 or (i) or 5(1) of this act; and the format and content of reports  
28 required in section 7 of this act. Nothing in this subsection may be  
29 construed to restrict the rate-making authority of the commission or a  
30 qualifying utility as otherwise provided by law.

31 (3) The commission and department may coordinate in developing  
32 rules related to process, timelines, and documentation that are  
33 necessary for implementation of this chapter.

34 (4) Pursuant to the administrative procedure act, chapter 34.05  
35 RCW, rules needed for the implementation of this chapter must be  
36 adopted by December 31, 2007. These rules may be revised as needed to  
37 carry out the intent and purposes of this chapter.

1        NEW SECTION.    **Sec. 9.**    CONSTRUCTION.    The provisions of this  
2 chapter are to be liberally construed to effectuate the intent,  
3 policies, and purposes of this chapter.

4        NEW SECTION.    **Sec. 10.**    SEVERABILITY.    If any provision of this act  
5 or its application to any person or circumstance is held invalid, the  
6 remainder of the act or the application of the provision to other  
7 persons or circumstances is not affected.

8        NEW SECTION.    **Sec. 11.**    SHORT TITLE.    This chapter may be known and  
9 cited as the energy independence act.

10       NEW SECTION.    **Sec. 12.**    CAPTIONS NOT LAW.    Captions used in this  
11 chapter are not any part of the law.

12       NEW SECTION.        **Sec. 13.**    Sections 1 through 12 of this act  
13 constitute a new chapter in Title 19 RCW.

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